

01
02
03
04
05
06
07 UNITED STATES DISTRICT COURT
08 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

09 DONNIE WILLIS,)
10) CASE NO. C11-0953-RSL-MAT
11 Petitioner,)
12)
13 v.) ORDER TO SHOW CAUSE
14 WESTERN STATE HOSPITAL,)
Respondent.)
_____)

15 Petitioner, proceeding *pro se*, submitted a 28 U.S.C. § 2254 habeas corpus petition.
16 (Dkt. 4.) He seeks to challenge a December 3, 2010 order revoking his conditional release
17 from Western State Hospital. However, for the reasons explained below, it appears that this
18 habeas petition is subject to dismissal.

19 “An application for a writ of habeas corpus on behalf of a person in custody pursuant to
20 the judgment of a State court shall not be granted unless it appears that . . . the applicant has
21 exhausted the remedies available in the courts of the State.” 28 U.S.C. § 2254(b)(1)(A). The
22 exhaustion requirement “is designed to give the state courts a full and fair opportunity to

01 resolve federal constitutional claims before those claims are presented to the federal courts,”
02 and, therefore, requires “state prisoners [to] give the state courts one full opportunity to resolve
03 any constitutional issues by invoking one complete round of the State’s established appellate
04 review process.” *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999). A complete round of the
05 state’s established review process includes presentation of a petitioner’s claims to the state’s
06 highest court. *James v. Borg*, 24 F.3d 20, 24 (9th Cir. 1994). Here, petitioner concedes he has
07 not yet sought any relief in state court. (See Dkt. 4 at 3-13.) Accordingly, petitioner may not
08 at this time pursue habeas relief in this Court.¹

09 The Court additionally identifies two other deficiencies in the petition. First, Western
10 State Hospital is not a proper respondent. A petitioner for habeas corpus relief must name the
11 state officer having custody of him or her as the respondent to the petition. *Rumsfeld v.*
12 *Padilla*, 542 U.S. 426, 434-35 (2004); *Stanley v. California Supreme Court*, 21 F.3d 359, 360
13 (9th Cir. 1994). That person typically is the warden of the facility in which the petitioner is
14 incarcerated. *Id.* Failure to name the petitioner’s custodian deprives federal courts of
15 personal jurisdiction. *Stanley*, 21 F.3d at 360. Second, petitioner alleges only that he is being
16 held “unlawfully.” (Dkt. 4 at 6.) However, a petitioner seeking habeas relief must prove that
17 his custody violates the Constitution, laws or treaties of the United States. 28 U.S.C. §
18 2254(a); see also *McKenzie v. McCormick*, 27 F.3d 1415, 1418-19 (9th Cir. 1994). Petitioner
19 fails to identify any federal constitutional claims. As such, if petitioner were able to establish
20

21 ¹ Petitioner should inquire into any state court deadlines relating to the revocation order at
22 issue. The Court notes that, for example, a state court petition for collateral attack on a judgment and
sentence in a criminal case must be filed within one year after the judgment becomes final. RCW
10.73.090(1).

01 exhaustion, he would have to identify both a proper respondent and federal constitutional
02 claims in an amended petition in order to pursue this case.

03 The Court also notes that it does not have a proper address for petitioner. The address
04 of record appears to be a residence, as opposed to petitioner's current place of confinement. In
05 responding to this Order, petitioner must confirm his current address.

06 Given the above, petitioner is hereby ORDERED to show cause why this petition
07 should not be dismissed without prejudice within **forty-five (45) days** of the date of this Order.
08 The Clerk is directed to send a copy of this Order to petitioner and to the Honorable Robert S.
09 Lasnik.

10 DATED this 22nd day of June, 2011.

11
12 

13 Mary Alice Theiler
14 United States Magistrate Judge
15
16
17
18
19
20
21
22